- **THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU**
- **+W.P.No. 20147 of 2004**

%. 15.03.2005.

Puppali Jayanthi

.....Petitioner

Vs.

$ 1. The District Collector, Ranga Reddy at Lakdikapool,

Hyderabad and two others.

.....Respondents

Counsel for the Petitioner : Mr. Harender Pershad

Counsel for the Respondent No.1: G.P.FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.2 : None appeared.

Counsel for the Respondent No.3: Mr.A.Sudarshan Reddy

<Gist :

>Head Note:

? Cases referred:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 20147 of 2004

Between:

Puppali Jayanthi, W/o.Venkataiah,
(Elected Sarpanch) R/o.Ekmai Village,

Bashirabad Mandal, Ranga Reddy District.

..... PETITIONER

AND

1. The District Collector, Ranga Reddy at Lakdikapool,

Hyderabad.
2. The Junior Civil Judge-cum-Election Tribunal at Tandur,

Ranga Reddy District.
3. Smt. Kanne Surekha, S/o.Gopal @ Gopal Reddy,
R/o Ekmai Village, Bashirabad Mandal, Ranga Reddy

District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the impugned Orders dt. 26-10-2004 in O.P.No. 1 of 2001 on the file of Junior Civil Judge -cum- Election Tribunal at Tandur, as arbitrary, illegal and violative of Articles 14, 21 of Constitution of India consequently set-aside the Impugned Order dt. 26-10-2004 in O.P.No. 1 of 2001 on the file of Junior Civil Judge-cum- Election Tribunal at Tandur.

Counsel for the Petitioner: MR.HARENDER PERSHAD

Counsel for the Respondent No.1: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.2: None appeared.

Counsel for the Respondent No.3: MR. A.SUDARSHAN REDDY

The Court made the following :

O R D E R :

Petitioner, whose election as Sarpanch of Ekmai Grampanchayat, Bashirabad Mandal, Ranga Reddy district was set aside by the Election Tribunal i.e. Junior Civil Judge, Tandur, Ranga Reddy district, on the ground that she was not qualified to the post of Sarpanch by virtue of Section 19(3) of the Andhra Pradesh Gram Panchayat Act, 1994, (for short, 'the Act'), preferred this writ petition.

2. The petitioner herein is the respondent and third respondent herein is the

petitioner before the Election Tribunal. The specific case of the third respondent, who challenged the election of the petitioner and who lost to the petitioner, is that, even by the date of election, petitioner was having two daughters and one son viz., Reshmi born in 1993; Rohit Kumar born in 1994, and Ramya born in 1997 and so by virtue of Section 19(3) of the Act, she is not qualified to contest the election.

3. Petitioner filed a counter in the said election petition contending that the years of birth of her children mentioned in the petition are not true and that she reserves her right to file additional counter by filing the date of birth certificates after obtaining the same from the concerned authorities and denied the contention that she is not qualified by virtue of Section 19(3) of the Act.

4. In support of her case, third respondent examined herself as P.W.1 and another witness as P.W.2 and marked Exs.A1 to A3 and X-1 and X-2. In support of her case, the petitioner examined herself as R.W.1 and another witness as R.W.2 and marked Ex.B-1, certificate of birth of the third child, said to have been issued by the Corporation of City of Gulbarga.

5. The learned Junior Civil Judge, Tandur, disbelieved Ex.B.1 on the ground that the name of the father of the child mentioned therein is P.Venkatesh, whereas the name of the husband of the petitioner is Venkataiah, and the name of the petitioner is mentioned as Jayanthi, but not as P.Jayanthi and so, there is every possibility of a certificate belonging to another person being pressed into service by the petitioner, and since Ex.X-2, the date of birth certificate of Ramya, issued by the Mukund Maternity Nursing Home and X Ray Clinic, Station Road, Tandur, shows that Ramya, a female child was born to

P.Venkataiah and P.Jayanthi on 06.08.1997.

6. Ex.X.2 was produced by P.W.2, the Head Master of the school in which the children of the petitioner studied, who swore to the fact that Ex.X.2 was enclosed to Ex.X-1-admission form when Ramya was admitted into School by her parents. The fact that the petitioner or her husband got admitted their third child Ramya in the school of which P.W.2 is the Head Master is not denied or disputed. Petitioner and her husband who furnished the dates of birth of their children in the applications for admission of their children have to explain as to why and how the dates of birth mentioned by them therein are not correct. In this case, third respondent gave the years of birth of the children of the petitioner. Significantly petitioner did not even mention the years of birth of her children and strangely put the third respondent to strict proof of the details mentioned by her in the petition. Third respondent can know the dates of birth of the children of the petitioner through the dates of birth mentioned in the school register. The actual years of birth of her children would be in the personal knowledge of the petitioner. So she ought to have mentioned the years and places of birth of her children in the counter, for the third respondent to verify the correctness thereof, and produce relevant evidence to counter the same. Strangely petitioner did not even mention as to where and in which year she gave birth to her third child viz., Ramya.

7. Though there is *prima facie* evidence in the shape of Ex.X-2 that her child Ramya was born at Tandur, petitioner did not even explain as to why she had to go to Gulbarga for confinement. In fact petitioner sprang a surprise on the third respondent by producing Ex.B.1 during trial, without a foundation in the pleading. It is well known that without there being a pleading in counter

regarding dates and places of birth of the children, petitioner cannot be permitted to adduce any evidence in respect thereof, and such evidence cannot also be taken into consideration.

8. In the above circumstances, the Tribunal holding that the petitioner incurred disqualification for her having three children by the date of election needs no interference, and so I find no merits in this writ petition.

9. Hence, writ petition is dismissed with costs. Advocate fee is fixed at Rs.2,500/-.

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C.Y.SOMAYAJULU, J.

Dated: 15th March, 2005.

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NOTE:

L.R. copy to be marked.

B/O

cs

1) One fair copy to the Hon'ble Sri Justice C.Y.Somayajulu (for His Lordship's kind perusal).

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MEMORANDUM OF COSTS

Respondents ( ) Costs Rs. P.

Stamp for Vakalatnama

Advocate's fee is fixed at 2,500-00

Translation and Printing Charges

_____

To be paid by the petitioner to the respondents 2,500-00

_____

(towards Advocate's fee is fixed at Two Thousand and five hundred only).

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

2. The District Collector, Ranga Reddy at Lakdikapool,

Hyderabad.
3. The Junior Civil Judge-cum-Election Tribunal at Tandur,

Ranga Reddy District.
4. Two C.Cs. to the Government Pleader for Panchayat Raj and

Rural Development, High Court Buildings, Hyderabad. (O.U.T.).

5. Two C.D. copies.

6. The Under Secretary, Union of India, Ministry of Law, Justice

and Company Affairs, New Delhi.

7. The Secretary, A.P.Advocates' Association Library, High Court

Buildings, Hyderabad.

8. 8 L.R. copies.

*Form-NIC-OGS/WP{**AVLR**}*